

stantial injuries and they were of a permanent nature and he had suffered a considerable amount of pain and suffering. The learned trial Judge has found fit to award \$15,000. For myself I do not feel disposed to interfere with that award and in the circumstances the appeal should be dismissed with costs.

Wee Chong Jin C.J. (Singapore): I agree that this appeal be dismissed with costs. The matter is really in the hands of the trial Judge and the amount of damages assessed is such that I do not consider it to be so wholly an over-estimate as would entitle an appellate Court to interfere.

Tan Ah Tah F.J.: I agree.

[*Murphy* again referred to the question of authorities in Malaya and in Singapore on damages being interchangeable.]

Wee Chong Jin C.J. (Singapore): So far as I am concerned I have always treated cases from Malaya as quotable here as authority and I have always accepted them.

Barakbah C.J. (Malaya): I agree we have cases in Malaya where Singapore cases are quoted as to quantum of damages and I accept them there.

Tan Ah Tah F.J.: I concur.

Appeal dismissed.

Solicitors: *P. T. Wong & Co.; Murphy & Dunbar.*

RE B. SURINDER SINGH KANDA

[O.C.J. (Hepworth J.) March 17, 1964]

[Penang — Petition for Admission No. 37 of 1963]

Advocate and Solicitor—Admission—Petition for—Objection thereto based on matters arising in previous litigation—Advocates and Solicitors Ordinance, 1947.

The petitioner, a Barrister-at-Law, sought admission as an advocate and solicitor of the High Court in Malaya. The Attorney-General, the Bar Council of Malaya and the Penang Bar Committee objected and opposed the admission. The objections were based on matters arising in a suit the petitioner brought against the Government of the Federation of Malaya for a declaration that his dismissal for the police force was void. The objectors urged the Court to take into consideration for the purposes of the petition the observations contained in the judgments in that suit as a result of the findings of a Police Board of Inquiry.

Held: the finding of the Privy Council was not based solely on a technicality. It went to the root of the merits. Accordingly as it was not justified for the proper dismissing authority to dismiss the petitioner from the police force because they had not properly proved their case, it could not be said that nevertheless on the same grounds for the same reasons the Court was justified in dismissing the petition for admission.

PETITION.

David Marshall and Jag-Jit Singh for the petitioner.

A *Wan Suleiman bin Pawan Teh* (Senior Federal Counsel) for the Attorney-General.

Eusoffe Abdoolcader for the Bar Council of Malaya.

C. O. Lim and S. Thillaimuthu for the Penang Bar Committee.

B *Hepworth J.:* This is a petition for admission by Mr. B. Surinder Singh Kanda as an advocate and solicitor of the High Court in Malaya, and is moved by Mr. David Marshall and Mr. Jag-Jit Singh on behalf of the petitioner. **C** *Inche Wan Suleiman bin Pawan Teh*, Senior Federal Counsel, on behalf of the Attorney-General, Mr. Eusoffe Abdoolcader on behalf of the Bar Council, and Mr. C. O. Lim and Mr. S. Thillaimuthu on behalf of the Penang Bar Committee, are objecting and opposing the admission.

The objections are wholly based on matters arising in what has been referred to as the *Kanda* case (*B. Surinder Singh Kanda v. The Government of the Federation of Malaya*) and which appear in the judgment of Rigby J. in the High Court, Penang,⁽¹⁾ in the judgments of the Court of Appeal,⁽²⁾ and in the judgment of the Privy Council.⁽³⁾

E The facts from which opposition arises and his Lordship's conclusions are set out in the judgment of Rigby J. as follows:—

"The plaintiff joined the Federation of Malaya Police Force on the 1st day of March, 1951, as a Probationary Asian Inspector. On the 31st day of August, 1951, by a Certificate of Appointment, he was appointed a Superior Police Officer in the rank of Probationary Inspector. On the 1st day of June, 1953, he was confirmed in the substantive rank of Police Inspector and placed on the pensionable establishment. On the 7th day of July, 1958, for reasons to which I will later have to refer, the then Commissioner of Police ordered his dismissal from the Police Force.

G In September, 1957, two persons were tried before me in the Supreme Court, Penang, on charges involving possession of forged lottery tickets, contrary to section 474 of the Penal Code. The 1st accused was charged with the substantive offence, and the 2nd accused with abetting the commission of that offence. The case for the prosecution rested substantially upon the testimony of two Police informers of a thoroughly dubious character, one of whom was a rogue and confidence trickster with a number of previous convictions, and both of whom undoubtedly committed perjury in the proceedings before the Court.

H The allegation was that the 1st accused had given forged lottery tickets to one of the informers and offered to supply more if he could find a suitable purchaser. The matter was reported to the Police and a trap was arranged, with a Police Detective Sergeant posing as the willing purchaser. Both the Police informers conducted the 1st accused to a hotel. In a room at the hotel the 1st accused was introduced to the intending purchaser. Forged lottery tickets were produced and the trap duly

1. [1960] M.L.J. 115.

2. [1961] M.L.J. 121.

3. [1962] M.L.J. 169.

sprung. The question for consideration virtually turned upon whether this was a genuine trap or, as alleged by the defence, a deliberate frame-up on the part of the two Police informers who had given false information to the Police for some nefarious purpose to suit their own ends. The case against the 2nd accused was considerably weaker. It consisted of two pieces of evidence. First, the evidence of one of the informers that when he met the 1st accused by arrangement in the street before proceeding to the hotel he saw a man, whom he identified as the 2nd accused, come up to the 1st accused and hand over to him a parcel subsequently found to contain the forged lottery tickets. The second piece of evidence was, perhaps, of even more dubious value. After the 1st accused had been arrested in the hotel after allegedly handing over the forged lottery tickets, he allegedly made a statement. As a result of that statement he was taken the following morning to a particular cafe. The purpose of taking him to the cafe was that he could there hand over the proceeds of the money, which he was supposed to have received for the sale of the forged lottery tickets, to the actual supplier of those tickets. While sitting in the cafe the 2nd accused was seen to pass by on a bicycle. The 1st accused called to him by name and the 2nd accused then came and sat down at the same table. He was then immediately arrested. The evidence went no further than that. The jury returned a unanimous verdict of not guilty against the 2nd accused and a majority verdict (5 to 2) of not guilty against the 1st accused.

During the course of the trial both informers swore positively that they were acting entirely independently of one another and that neither of them knew that the other was working in conjunction with the Police. One of them went so far as to say that when he conducted the 1st accused to the hotel to meet the prospective buyer of the forged lottery tickets he had no idea that a trap had been arranged. Yet both of them had given information to the Police and both of them were actively assisting the Police. It was clear that their evidence in this respect was palpably and deliberately untrue. Unfortunately, it was equally clear during the trial that at least two other Police Officers had deliberately given false evidence...."

It should be stated in fairness here that neither of these Police Officers was the petitioner.

"As a result of the failure of the prosecution to secure a conviction in the forged lottery tickets case a Board of Inquiry was convened by order of the then Commissioner of Police. The Board of Inquiry was presided over by Mr. D. W. Yates, who was then Acting Senior Assistant Commissioner, C.I.D. Headquarters, Kuala Lumpur. The Board sat for a number of days during December, 1957, and January, 1958, and recorded the unsworn statements of 18 witnesses, including the plaintiff, the two Police informers, and the Police witnesses who had given evidence for the prosecution in the High Court Criminal Trial. The Board produced a most careful and exhaustive Report of its findings in which it dealt with the part played by each Police Officer who had had anything to do with the case.

In its findings the Board of Inquiry stated that they were 'unanimously of the opinion that Police Inspector Kanda is the "villain of the piece"'. The Board found not only that Inspector Kanda had suborned the Police witnesses with the object of simplifying and short-circuiting certain evidence, but also that he had suborned the two Police informers with the very much more sinister motive 'dishonestly to strengthen the case against both accused in order to ensure a conviction in Court'. In paragraph 72 of its Report the Board stated that they were 'forced to the conclusion that Inspector Kanda is a very ambitious and a thoroughly unscrupulous officer who

A is prepared to go to any lengths, including the fabrication of false evidence, to add to his reputation as a successful investigator'. The Board could not help wondering how many of his previous successful cases had been achieved by similar methods.

As a result of the Findings of the Board disciplinary charges were preferred against the plaintiff. Upon the instructions of the Deputy Commissioner of Police, Mr. H. W. Strathairn was appointed as Adjudicating Officer to hear those charges. A letter dated the 12th day of March, 1958, (Exhibit P.18) written and signed by Mr. D. W. Yates was sent to Mr. Strathairn enclosing the specimen charges drafted by Mr. Yates which, it was suggested, should be preferred against the plaintiff and indicating briefly the witnesses that should be called in support of those charges. Enclosed with the letter was a copy of the Findings of the Board of Inquiry.

The nature and particulars of the charges actually preferred against the plaintiff are set out in paragraph 4 of the Statement of Claim and I do not propose to re-state them here. Looking at those disciplinary charges as they stand I think it not unfair to say that they seem to bear little relation to the extremely serious Findings of the Board, that the plaintiff had deliberately suborned witnesses to commit perjury and to fabricate false evidence in support of serious criminal charges against two members of the public. The seriousness of the allegations against the plaintiff is fully emphasised in the draft charges prepared by Mr. Yates and it seems to me unfortunate that those charges as drafted were not persisted in against the plaintiff rather than the preferment of the disciplinary charges, relatively trivial on the face of them, upon which he was, in fact, tried....

Disciplinary proceedings against the plaintiff commenced on the 16th day of April, 1958, and concluded on the 10th day of May, 1958....

On the 27th day of June, 1958, the Commissioner of Police formally approved the recommendation for dismissal of the plaintiff made by the Adjudicating Officer (see A.132) following upon his conviction upon the original charge. On the 7th day of July, 1958, that order of dismissal was formally notified to the plaintiff by the Chief Police Officer, Perak. (See A.77-78).

On the 14th day of July, 1958, the plaintiff lodged his appeal....

But, to my mind, the most serious aspect in the case lies in the fact that the plaintiff, although furnished with copies of the statements made by the witnesses before the Board of Inquiry, was not furnished with a copy of the Findings of that Board. On the other hand, a copy of those Findings was supplied to the Adjudicating Officer before the hearing of the disciplinary charges, and was before him throughout those proceedings. These Findings, careful and exhaustive as they were, dealt in detail with the evidence of each witness heard by the Board and expressed views as to the credibility of each witness, and the weight to be attached to his statement. In the result they presented a most damning indictment against the plaintiff as an unscrupulous scoundrel who had suborned witnesses, both Police and civilian, to commit perjury and who was 'prepared to go to any lengths to add to his reputation as a successful investigator'. That was the picture presented to the Adjudicating Officer, Mr. Strathairn, by the Findings of the Board of Inquiry before he commenced to hear the charges against the plaintiff. The charges, although relatively trivial at first sight, involved a repetition by these witnesses of the statements they had given before the Board of Inquiry, including the very serious allegations against the plaintiff.

It is an elementary principle of law in criminal cases that, subject to certain exceptions, the bad character or previous convictions of an accused person standing trial on a charge or charges preferred against him shall not be disclosed to the tribunal during the course of his trial on those charges, and an appellate Court will generally interfere and quash a conviction, or order a retrial, in cases where that strict principle has been infringed. The reason for the rule is, of course, that the introduction and inclusion of such evidence may tend to prejudice the tribunal against the accused in the charge or charges then under consideration. In the present case the Adjudicating Officer had before him the unanimous Findings of the Board of Inquiry. Those Findings dealt in detail with precisely the same evidence as would be, and was, called before the Adjudicating Officer on the disciplinary charges to be preferred against the plaintiff, and dealt with the credit and credibility of each witness. It seems to me quite impossible to say that those Findings must not inevitably have prejudiced the mind of the Adjudicating Officer against the plaintiff in relation to the disciplinary charges preferred against him....

But the inference appears to me irresistible that his mind must have been seriously prejudiced, whether consciously or unconsciously, against the plaintiff by the most damning Findings that he had before him contained in the unanimous Report of the Board of Inquiry presided over by Mr. Yates. In my view, it was contrary to the fundamental principles of justice which govern a fair trial that the Adjudicating Officer should have had before him, both before and during those disciplinary proceedings, the wholly adverse Report of the Board of Inquiry against the accused person whom he was then trying on those charges.

But the matter does not end there. Whilst the Adjudicating officer had before him a copy of these Findings, no such copy had been supplied to the plaintiff even though they most materially and injuriously affected him not only in relation to the disciplinary charges which he was then facing, but also as to the matter of sentence upon his conviction on those charges. He had no opportunity to deal with the Findings contained in that Report or to refute or challenge them in any way.

In my view, the furnishing of a copy of the Findings of the Board of Inquiry to the Adjudicating Officer appointed to hear the disciplinary charges, coupled with the fact that no such copy was furnished to the plaintiff, amounted to such a denial of natural justice as to entitle this Court to set aside those proceedings on this ground. It amounted, in my view, to a failure to afford the plaintiff a reasonable opportunity of being heard in answer to the charge preferred against him which resulted in his dismissal...."

The Court of Appeal disagreed with Rigby J. on this aspect of the case on the ground of "there being no possibility of bias as far as the Board of Inquiry was concerned". What they meant by that was of course that the Adjudicating Officer at the disciplinary proceedings was not biased by having a copy of the findings of the Board of Inquiry.

Their Lordships of the Privy Council however disagreed with the views of the Court of Appeal on this aspect of the case being of the opinion that the proper approach was somewhat different from that taken by them. The proper approach in their Lordships' opinion was as follows:—

"The rule against bias is one thing. The right to

be heard is another. Those two rules are the essential characteristics of what is often called natural justice. They are the twin pillars supporting it. The Romans put them in the two maxims: *Nemo iudex in causa sua*, and *Audi alteram partem*. They have recently been put in the two words Impartiality and Fairness. But they are separate concepts and are governed by separate considerations. In the present case Inspector Kanda complained of a breach of the second. He said that his constitutional right had been infringed. He had been dismissed without being given a reasonable opportunity of being heard.

If the right to be heard is to be a real right which is worth anything, it must carry with it a right in the accused man to know the case which is made against him. He must know what evidence has been given and what statements have been made affecting him; and then he must be given a fair opportunity to correct or contradict them. This appears in all the cases from the celebrated judgment of Lord Loreburn L.C. in *Board of Education v. Rice* [1911] A.C. 179, 182; 27 T.L.R. 378 down to the decision of their Lordships' Board in *Ceylon University v. Fernando* [1960] 1 W.L.R., 223; [1960] 1 All E.R. 631, P.C. It follows, of course, that the judge or whoever has to adjudicate must not hear evidence or receive representations from one side behind the back of the other. The Court will not enquire whether the evidence or representations did work to his prejudice. Sufficient that they might do so. The Court will not go into the likelihood of prejudice. The risk of it is enough. No one who has lost a case will believe he has been fairly treated if the other side has had access to the Judge without his knowing. Instances which were cited to their Lordships were *Re Gragson* (1894) 70 L.T. 106; *Rex v. Bodmin Justices* [1947] K.B., 321; [1947] 1 All E.R. 109 and *Goold v. Evans* [1951] 2 T.L.R. 1189, to which might be added *Rex v. Architects Registration Tribunal* [1945] 2 All E.R. 131; 61 T.L.R. 445, and many others.

Applying these principles their Lordships are of opinion that Inspector Kanda was not in this case given a reasonable opportunity of being heard. They find themselves in agreement with the view expressed by Rigby J. in these words; 'In my view, the furnishing of a copy of the Findings of the Board of Inquiry to the Adjudicating Officer appointed to hear the disciplinary charges, coupled with the fact that no such copy was furnished to the plaintiff, amounted to such a denial of natural justice as to entitle this Court to set aside those proceedings on this ground. It amounted, in my view, to a failure to afford the plaintiff a reasonable opportunity of being heard in answer to the charge preferred against him which resulted in his dismissal'. The mistake of the police authorities was no doubt made entirely in good faith. It was quite proper to let the Adjudicating Officer have the statements of the witnesses. The Regulations show that it is necessary for him to have them. He will then read those out in the presence of the accused. But their Lordships do not think it was correct to let him have the Report of the Board of Inquiry unless the accused also had it so as to be able to correct or contradict the statements in it to his prejudice".

There are two points in connection with this Board of Inquiry which are of particular importance in my view. One is that the evidence was taken unsworn, and the other is that four of the witnesses, including two police officers, were per-jurors.

There is also the further matter arising out of the report of this Board of Inquiry and that is that although the finding of the board was that the petitioner had committed the criminal offence

of fabricating false evidence he was never at any time prosecuted for any offence in connection with the matter.

It was the report based on this evidence that their Lordships of the Privy Council did not think it was correct to let the adjudicating officer have unless the petitioner also had it "so as to be able to correct or contradict the statements in it to his prejudice".

The objectors are asking this Court to go behind the finding of the Privy Council on the ground, they say, that it was based solely on a technicality. Had the decision in the *Kanda* case been based solely on the fact that the dismissing authority had no jurisdiction to dismiss then I would have agreed with them. It would then have been a matter of the conviction being correct but the sentence being carried out by the wrong executioner. But this finding was no technicality. It went to the root of the merits. If everything that had happened in the way it happened did not justify the proper dismissing authority from dismissing the petitioner from the police force because they had not properly proved their case, how can it be said that nevertheless on the same grounds for the same reasons I am now justified in dismissing this petition?

Petition granted.

LEE YOKE CHOONG v. PUBLIC PROSECUTOR

[A.Cr.J. (Ong J.) March 25, 1964]

[K.L. — Criminal Appeal No. 13 of 1964]

Penal Code, s. 506—Criminal intimidation—Intimidation to withdraw complaint—Threat of using acid—Sentence.

The offence of criminal intimidation lies in the intent behind a threat, not in its effect and the sentence must be one appropriate to the gravity of the offence so assessed.

CRIMINAL APPEAL.

A. A. Thomas for the appellant.

Gunn Chit Tuan (Deputy Public Prosecutor) for the respondent.

The facts of the case appear sufficiently from the judgment.

Ong J.: Lee Yoke Choong was convicted in the Sessions Court, Kuala Lumpur and sentenced to nine months' imprisonment on the following charge:

"That you on February 2, 1963 at about 4.30 p.m. at No. 448, Pudu Road, in the district of Kuala Lumpur, in the State of Selangor, committed criminal intimidation by threatening one Kok Joon Seng with injury to his person, to wit, by throwing acid into his face and make him blind, with intent to cause him alarm to the said Kok Joon Seng and thereby committed an offence punishable under section 506 of the Penal Code."

He originally gave notice of appeal against both the conviction and sentence but by his petition of appeal has withdrawn his appeal against conviction. The Public Prosecutor cross-appealed against the sentence on the ground of

inadequacy.

The facts established in this case were as follows: On February 25, 1963 at about 9.30 a.m. the complainant's son was assaulted, while on his way home after delivering goods to customers, by persons practising the protection racket on tradesmen. A report made by the complainant led to the immediate arrest of two of the racketeers. Later in the afternoon of the same day Lee Yoke Choong, a complete stranger to the complainant, came to the latter's shop, invited him to a coffee-shop and there told him to go to the Police to withdraw his complaint against the persons arrested. Two alternatives were placed before him. If the case against them was withdrawn nothing would happen. Otherwise, "the gang had a lot of members in Selangor, Perak and elsewhere" and acid would be thrown on the complainant to blind him. As a result he did go to the Police "with a view to withdrawing the charge" and he did ask to be permitted to do so in order to avoid trouble. He went to the Police within an hour of the interview with Lee and reported the facts as set out above.

In mitigation of sentence it is said that Lee was a first offender, a married man with two infant children, the sole family bread-winner for his mother and brothers, that he himself did not threaten the complainant but was only a mediator, that the complainant was not in fact frightened and that Lee never threatened to carry out the threat personally. I consider all these grounds are beside the point. The offence of criminal intimidation lies in the intent behind a threat, not its effect.

On the other hand I entirely agree with the Public Prosecutor that the sentence is manifestly inadequate. The crime of extortion in various forms is rife. The criminals who control and direct lesser men in the hierarchy of crime remain safely in the background and are rarely caught. They employ youths as their tools who plead their age in mitigation to avoid a stiff prison sentence. When the underlings are caught the leaders come forward under the guise of "mediators" to pervert the course of justice and abort a prosecution even before it has started. They veil their threats with soft words, not threatening their victims directly but by merely warning them of unfortunate consequences in case they should contemplate being recalcitrant. The cap of a major culprit fits this convicted criminal Lee.

I accordingly dismiss his appeal and allow the cross-appeal by the Public Prosecutor. I set aside the sentence of the President and in its place I pass sentence of 3 years imprisonment because this person was making a serious attempt to paralyse the administration of criminal justice.

Appeal dismissed; cross-appeal allowed.